

REMARKS

Claims 2, 3, 5, 6, 8, and 9 have been amended. Claims 1-9 stand in this application. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Claims 2 and 3 stand rejected under 35 U.S.C. § 112 for insufficient antecedent basis. Applicant respectfully traverses the rejection based on the amendments above. Applicant has amended claims 2 and 3 to correct this informality and respectfully requests that the § 112 rejection be withdrawn. Applicant further submits that the above amendments are made to overcome a § 112 rejection and are not made to overcome the cited reference. Accordingly, these amendments should not be construed in a limiting manner.

Claims 1-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over DeSimone et al. (U.S. Patent No. 5,905,872). Applicant respectfully traverses the rejection.

With respect to claim 1, Applicant respectfully submits that DeSimone fails to teach or suggest all the features recited in the claim. A *prima facie* case of obviousness under 35 U.S.C. § 103(a) requires, among other things, that the cited reference teach or suggest every element of the claim. See MPEP § 2142. Applicant submits that the Office has not established a *prima facie* case of obviousness because not all the elements of claim 1 are taught or fairly suggested by the cited reference.

Claim 1 provides, in part:

transmitting . . . packetized messages indicative of
telephone calls in progress at an endpoint of said data
network

Nowhere does DeSimone teach or even fairly suggest that there are “telephone calls in progress at an endpoint,” as recited in claim 1. Rather, the client 201, which the Office Action refers to as an endpoint, merely “downloads multimedia-on-demand applications, where a client downloads a file containing audio and/or video information for playback from a WWW server.” *See* DeSimone at col. 2, lines 44-46, for example. Thus, DeSimone neither teaches nor fairly suggests that there are “telephone calls in progress” at the client 201. The client 201 merely receives packetized audio/video information from a server. Accordingly, although there may be packetized messages transmitted and received by the client 201, DeSimone neither teaches nor fairly suggests that the “packetized messages are indicative of telephone calls in progress at an endpoint,” as recited in claim 1. Therefore, Applicant submits that claim 1 is non-obvious and patentable over the DeSimone reference at least on this basis and respectfully requests withdrawal of the obviousness rejection of claim 1.

Nevertheless, Applicant further submits that claim 1 is patentable over the cited reference because it also fails to teach or fairly suggest:

transmitting, from said call processing device to said
application computer over said data network, packetized
messages indicative of the length of said telephone calls[,]

as recited in claim 1. First, as previously discussed herein, there is no teaching or suggestion in DeSimone that there are telephone calls in progress at the client 201, therefore, there is no teaching or suggestion that the packetized messages at the client 201 are “indicative of the length of said telephone calls.” Rather, DeSimone discloses that the server 206 responds to the proxy server 205 request with a response 212 containing both

control information and the requested media object, which is then forwarded to the client 201. *See* DeSimone, Fig. 2, col. 3, line 47 through col. 4 lines 1-4, for example. The media object or content type disclosed, however, is packetized video/mpeg information and not “telephone calls in progress,” and thus the content length “876999” disclosed in the response shown in Fig. 2 merely refers to the length of the video/mpeg information contained in the response from the server 206 to the client 201, and not to the length of the calls in progress at the client 201. There is no teaching or fair suggestion in DeSimone that the packetized messages at the client 201 is indicative of the length of the telephone calls in progress at the endpoint (*e.g.*, the client 201).

Therefore, Applicant respectfully submits, that the DeSimone reference fails to teach or suggest all the features recited in claim 1. Accordingly, Applicant submits that claim 1 is non-obvious over the DeSimone reference and the obviousness rejection with respect thereto should be withdrawn. Applicant further submits that claims 2 and 3 also are patentable over DeSimone at least because of their dependency from claim 1. (*See* MPEP § 2143 for the proposition that if an independent claim is non-obvious under § 103(a), then any claim depending therefrom is non-obvious.)

Claims 4 and 7 and contain similar features as those recited in claim 1. Accordingly, for reasons analogous to those presented previously herein with respect to claim 1, Applicant respectfully submits that claims 4 and 7 also are non-obvious and patentable over the DeSimone reference and the obviousness rejection with respect thereto should be withdrawn. For reasons analogous to those set forth previously herein, Applicant also submits that claims 5 and 6, which depend from claim 4, and claims 8 and 9, which depend from claim 7, also are non-obvious and patentable over the DeSimone

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reference and the obviousness rejection with respect thereto also should be withdrawn.

See MPEP § 2143, for example.

Applicant does not otherwise concede, however, the correctness of the Office's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-9 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-3387 to discuss any matter concerning this application.

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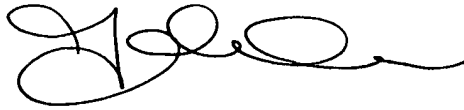
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The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. 02-2666.

Respectfully submitted,

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John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

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Date

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